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*Co-Lead Attorneys for Plaintiffs*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

JONATHAN CROWELL, BENJAMIN LAPIN AND  
 REUVEN LAPIN, on plaintiffs' own behalves and on  
 behalf of all others similarly situated,

Plaintiffs,

vs.

DAVID H. MCCORMICK, ROBERT M.  
 CALDERONI and Ariba, Inc.,

Defendants.

Case No. 3:06-CV-05575-MHP

Assigned to Hon. Marilyn Hall Patel

Class Action

**AMENDED COMPLAINT FOR  
 VIOLATIONS OF FEDERAL  
 SECURITIES LAWS**

Demand for Jury Trial

## SUMMARY OF THE ACTION

1. This is a securities fraud class action against Ariba, Inc. ("Ariba" or the "Company") and its senior management, on behalf of all persons who purchased the common stock of Ariba between May 29, 2003 and February 7, 2005 inclusive (the "Class Period").

2. Ariba provides "spend management" software that enables companies to manage the purchasing of non-payroll goods and services required to run their businesses. Ariba offers its customers software applications, professional services, and network access. Its software streamlines business processes related to the identification of suppliers of goods and services, the negotiation of the terms of purchases, and the management of ongoing purchasing activities.

3. Prior to and throughout the Class Period, certain of Ariba's products were being offered, marketed and sold by Ariba although -- unbeknownst to the investing public -- Ariba marketed those products in willful violation of patents held by another company. Those Ariba products accounted for a material percentage of Ariba's business, revenues, and earnings.

4. On February 8, 2005, Ariba disclosed that certain of its products had been found by a jury to have been developed in **willful** violation of patents held by another company. In response to this news, Ariba's common stock declined 17.5% in a single day on February 8, 2005, causing injury to plaintiffs and the Class.

## JURISDICTION AND VENUE

5. The claims asserted herein arise under and pursuant to §§ 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78t(a)], and Rule 10b-5 [17 C.F.R. § 240.10b-5] promulgated thereunder by the SEC.

6. Venue is proper in this District pursuant to §27 of the Exchange Act. Many of the acts and transactions giving rise to the violations of law complained of herein occurred in this District.

7. In connection with the acts, conduct and other wrongs complained of, the defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, the United States mails, and the facilities of the national securities markets.

**THE PARTIES**

8. Plaintiff Jonathan Crowell purchased Ariba common stock during the Class Period as detailed in the certification previously filed with the Court, and was damaged thereby.

9. Plaintiff Benjamin Lapin purchased Ariba common stock during the Class Period as detailed in the certification previously filed with the Court, and was damaged thereby.

10. Plaintiff Reuven Lapin purchased Ariba common stock during the Class Period as detailed in the certification previously filed with the Court, and was damaged thereby.

11. Defendant Ariba is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at 807 11<sup>th</sup> Avenue, Sunnyvale, California 94089. Ariba makes, uses, sells and offers for sale in the United States certain electronic sourcing and procurement software applications, services, systems and methods, including those referred to as "Enterprise Spend Management" applications.

12. Defendant David H. McCormick was, at all times relevant hereto, President of Ariba and a member of Ariba's Board of Directors. Because of his positions, he knew the adverse non-public information about the business of Ariba, as well as its finances, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. During the Class Period, McCormick participated in the issuance of false and/or misleading statements, including the preparation of the false and/or misleading press releases detailed in ¶¶ 19-53. During the Class Period, McCormick sold approximately 169,000 shares of Ariba stock at artificially-inflated prices for proceeds of approximately \$2.5 million.

13. Defendant Robert M. Calderoni was, at all times relevant hereto, Chairman and Chief Executive Officer of Ariba. Because of his positions, he knew the adverse non-public information about the business of Ariba, as well as its finances, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors' meetings and

1 committees thereof and via reports and other information provided to him in connection therewith.  
2 During the Class Period, McCormick participated in the issuance of false and/or misleading  
3 statements, including the preparation of the false and/or misleading press releases detailed in ¶¶ 19-  
4 53.

5 14. By reason of their positions, the officers and directors identified above in ¶¶ 12-13  
6 (collectively the "Individual Defendants") had access to material inside information about Ariba and  
7 were able to control directly or indirectly the acts of Ariba and the contents of the representations  
8 disseminated during the Class Period by or in the name of Ariba.

9 15. The Individual Defendants, because of their positions of control and authority as  
10 officers and/or directors of the Company were able to and did control the contents of the various  
11 quarterly and annual financial reports, SEC filings, press releases, and presentations to securities  
12 analysts pertaining to Ariba. Each Individual Defendant was provided with copies of Ariba's press  
13 releases and SEC filings alleged herein to be misleading prior to or shortly after their issuance and  
14 had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because  
15 of their board membership and/or executive and managerial positions with Ariba, each Individual  
16 Defendant had access to the adverse non-public information about Ariba's business, finances,  
17 products, markets and present and future business prospects particularized herein, via access to  
18 internal corporate documents, conversations or connections with corporate officers and employees,  
19 attendance at Ariba's management and/or Board of Directors' meetings and committees thereof and  
20 via reports and other information provided to them in connection therewith. The Individual  
21 Defendants are liable for the false statements pleaded herein at ¶¶ 19-53, as those statements were  
22 each "group published" information, the result of the collective action of the Individual Defendants.

23 16. Each of the defendants either knew or deliberately disregarded the fact that the illegal  
24 acts and practices and misleading statements and omissions described herein would adversely affect  
25 the integrity of the market for Ariba stock and would artificially inflate or maintain the price of that  
26 stock. Each of the defendants, by acting as herein described, did so knowingly or in such a reckless  
27 manner as to constitute a fraud and deceit upon plaintiffs and members of the Class plaintiffs seek  
28 to represent.

**THE MARKET FOR Ariba SECURITIES WAS EFFICIENT**

17. At all relevant times, the market for Ariba common stock was efficient. Ariba had tens of millions of shares outstanding, and its shares traded on NASDAQ. Ariba trades an average of more than half a million shares per day. Among the indicia of the efficient market in which Ariba traded were Ariba's ability to file periodic public reports with the SEC, that numerous securities analysts followed the stock such as Piper Jaffray, JMP Securities, RBC Capital Markets, and CIBC World Markets, and that the market instantly absorbed information about Ariba. Because Ariba's stock traded in an efficient market, Plaintiffs are entitled to avail themselves of the fraud-on-the-market theory including the presumption of reliance.

**MATERIALLY MISLEADING CLASS PERIOD STATEMENTS**

18. Throughout the Class Period, Ariba repeatedly issued public announcements and disclosures describing its products (as set forth below in ¶¶ 19-53). Those statements were materially misleading for failure to disclose that Ariba, in developing and marketing those products, willfully infringed on the patents of a competitor (as discussed in ¶¶ 56-71, below).

19. On April 17, 2003, Ariba issued a press release publicizing a conference devoted to Ariba's spend management software. The conference sessions were to include panel discussions, technical demonstrations, Ariba product presentations and customer testimonials from leading companies and industry analysts, among others, such as American Express, AT&T, ChevronTexaco, IBM, Credit Suisse, JP Morgan Chase, and Merrill Lynch & Co. Further, the conference sessions were "designed to provide attendees with practical information on how they can achieve substantial cost savings and improved spend management efficiencies through [sic] Enterprise Spend Management" as well as "help attendees learn about the key components of the Ariba Spend Management solutions." The April 17, 2003 press release was materially misleading because while publicizing the benefits of its spend management software, Ariba did not disclose that it was willfully infringing on a competitor's patents.

20. On April 28, 2003, Ariba issued two press releases announcing the gain of a new large customer for Ariba's spend management software, its financial results for the second quarter of fiscal 2003, and a new product in its portfolio of spend management software products. The first

1 press release announced that Limited Brands, Inc. had selected Ariba Spend Management including  
2 the software Ariba Buyer among others - Ariba Buyer being one of the products that a jury found to  
3 have infringed on ePlus' patents - to "better manage its corporate-wide spend, as well as the  
4 complete purchasing process." The second press release disclosed, *inter alia*, second quarter  
5 revenues of \$59.3 million representing a 3 percent increase from the same period during fiscal 2002,  
6 and software license revenues of \$27.7 million representing an increase of 10 percent from the same  
7 quarter the prior year. Both of Ariba's April 28, 2003 press releases, which were also included in  
8 the Company's Form 8-K filed with the SEC on April 28, 2003, were materially misleading because  
9 neither press release disclosed that Ariba was wilfully infringing on a competitor's patents  
10 particularly with respect to Ariba Buyer.

11 21. On April 29, 2003, Ariba issued a press release announcing the benefits obtained by  
12 one large Ariba customer from using Ariba spend management software. The press release quoted  
13 Neil Lustig, an Ariba employee, stating that "[o]ur solution offers a unique combination of software  
14 and services that allow companies to accurately monitor and analyse [sic] costs through a closed loop  
15 Spend Management process." The April 29, 2003 press release was materially misleading because  
16 Ariba did not disclose that it was wilfully infringing on a competitor's patents.

17 22. On May 3, 2003, Ariba issued a press release announcing deepened ties with a large  
18 customer for Ariba's spend management software and proclaiming some of the benefits of such  
19 software. The press release stated, *inter alia*, that Best Buy had expanded its commitment to Ariba  
20 Spend Management, which supports Best Buy's "Book It, Buy It, Expense It" or "B2E" program.  
21 The press release stated that the "B2E program enables Best Buy to increase its efficiency by  
22 managing purchases for its headquarters, its retail stores, and distribution and service centers with  
23 *Ariba® Buyer™ and to track and reimburse expenses with Ariba® Travel & Expense™.*"  
24 (Emphasis added). Further, "Best Buy has upgraded to the latest version of Ariba Buyer" - Ariba  
25 Buyer being one of the products a jury found that infringed on a competitor's patents - and added  
26 other software products including Ariba Contracts and Ariba Invoice. The May 3, 2003 press release  
27 was materially misleading because Ariba did not disclose that it was wilfully infringing on a  
28 competitor's patents.



1           23.     On May 13, 2003, Ariba issued two press releases announcing the benefits of using  
2 Ariba's spend management software and new capabilities and upgrades concerning such software.  
3 One of the press releases announced "major upgrades" to the Ariba Spend Management solution set.  
4 The enhanced spend management solution set includes specialized features addressing "critical areas  
5 that pose[d] special challenges for managing services spend" such as non-PO procurement, supplier  
6 collaboration, complex bundled pricing, service level and milestone-based agreements, and rich  
7 services spend data. Both of Ariba's May 13, 2003 press releases were materially misleading  
8 because neither disclosed that Ariba was wilfully infringing on a competitor's patents.

9           24.     On June 10, 2003, Ariba issued a press release announcing a workshop for Ariba's  
10 spend management software, and proclaiming the benefits of such software. The press release stated,  
11 *inter alia*, that the interactive workshops will teach enterprise spend management strategies as well  
12 as educate students about the different functions and capabilities in the spend management solutions.  
13 The June 10, 2003 press release was materially misleading because Ariba did not disclose that it was  
14 wilfully infringing on a competitor's patents.

15           25.     On June 16, 2003, Ariba issued a press release publicizing selected customer and  
16 industry analyst presentations about Ariba's spend management software available through its own  
17 online resource website. The press release stated, *inter alia*, that the presentations covered various  
18 topics including services spend management, strategic sourcing, category-specific spend  
19 management and outsourcing professional services, and were accessible through Ariba's online  
20 resource website. The June 16, 2003 press release was materially misleading because Ariba did not  
21 disclose that it was wilfully infringing on a competitor's patents.

22           26.     On June 20, 2003, Ariba issued a press release announcing additional purchases by  
23 a large customer for Ariba's spend management software, and proclaiming some of the benefits of  
24 such software. Specifically, the press release stated, *inter alia*, that ChevronTexaco expanded its  
25 purchase of the Ariba Spend Management solutions by adding six new software products to its  
26 existing Ariba Buyer procurement solution - Ariba Buyer being one of the products a jury found to  
27 have infringed on a competitor's patents. Ariba further stated that benefits of the spend management  
28 solutions including allowing ChevronTexaco to "reduce payment cycle times, improve cash flow to

1 suppliers and allow [it] to benefit from early payment discounts.” The June 20, 2003 press release  
2 was materially misleading because Ariba did not disclose that it was wilfully infringing on a  
3 competitor’s patents.

4 27. On July 15, 2003, Ariba issued a press release announcing a new product in its  
5 portfolio of spend management software products. The press release stated, *inter alia*, that the Ariba  
6 Supplier Performance Management (SPM) module was added to the Ariba Spend Management  
7 solution, which was designed to assist customers obtain their enterprise spend management  
8 objectives through “performance measurement, collaboration and improved supplier relationships.”  
9 The press release also proclaimed the features and benefits of the Ariba SPM module. The July 15,  
10 2003 press release was materially misleading because in discussing its spend management software  
11 products, Ariba did not disclose that it was wilfully infringing on a competitor’s patents.

12 28. On July 22, 2003, Ariba issued a press release announcing, *inter alia*, its financial  
13 results for the third quarter of fiscal 2003, and the gain of new, large customers for Ariba’s spend  
14 management software. Ariba disclosed, *inter alia*, that third quarter revenues were \$56.6 million  
15 representing a 4 percent decrease from the same quarter the prior year, and software license revenues  
16 of \$21.3 million representing a 21 percent decrease from the corresponding fiscal 2002 quarter.  
17 Ariba also announced new customers, namely Goodyear Tire & Rubber Company and AXA e-  
18 Services, both of whom purchased Ariba Buyer, which was one of the products that a jury found to  
19 have infringed on a competitor’s patents. The July 22, 2003 press release, which was also included  
20 in the Company’s Form 8-K filed with the SEC on July 22, 2003, was materially misleading because  
21 Ariba did not disclose that it was wilfully infringing on a competitor’s patents.

22 29. On July 23, 2003, Ariba issued a press release announcing the gain of a new large  
23 customer for Ariba’s spend management software and proclaiming the benefits of such software.  
24 Specifically, the press release stated, *inter alia*, that San Miguel Corporation, a food, beverage and  
25 packaging company in Asia, selected the full Spend Management solution set, which includes Ariba  
26 Buyer, to “automate, streamline and manage its purchasing processes company-wide.” Benefits of  
27 the software include allowing the user to “aggregate purchasing power..., channel spend to preferred  
28 suppliers, negotiate better contracts and ensure compliance against those contracts.” The July 23,



1 2003 press release was materially misleading because Ariba did not disclose that it was wilfully  
2 infringing on a competitor's patents.

3 30. On August 7, 2003, Ariba issued a press release announcing that the Government of  
4 the District of Columbia had completed the first deployment phase of Ariba's spend management  
5 software and proclaiming the benefits of such software. The press release stated, *inter alia*, that the  
6 deployment of the Ariba Buyer solution - Ariba Buyer being one of the products a jury found to have  
7 infringed on a competitor's patent - and Ariba eForms was known internally as the Procurement  
8 Automated Support System or PASS and was implemented "to better manage the purchase of  
9 contract and consulting services, IT equipment and office supplies, and plans to later extend the  
10 solution to include wider categories of spend." The August 7, 2003 press release was materially  
11 misleading because in publicizing its products, particularly the Ariba Buyer software, Ariba did not  
12 disclose that it was wilfully infringing on a competitor's patents.

13 31. On August 27, 2003, Ariba issued a press release publicizing a conference devoted  
14 to Ariba's spend management software. The press release stated, *inter alia*, that the conference  
15 would feature Ariba customers and executives discussing spend management experiences, spend  
16 analysis, effective strategies, and strategic sourcing and procurement solutions. Ariba customers  
17 scheduled to present at the conference included Air Products and Chemicals Corporation, and the  
18 District of Columbia. The August 27, 2003 press release was materially misleading because in  
19 publicizing the conference, presenters and topics to be discussed, Ariba omitted any mention of its  
20 patent violations concerning such software.

21 32. On October 22, 2003, Ariba issued a press release announcing its financial results for  
22 the fourth quarter and fiscal year of 2003 (ended September 30, 2003), as well as the gain of new  
23 customers for Ariba's spend management software and deepened ties with existing customers.  
24 Defendants disclosed, *inter alia*, that fourth quarter revenues were \$59.1 million with software  
25 license revenues of \$23.6 million representing a 2 percent increase from software license revenues  
26 of \$23.2 million during the same quarter of fiscal 2002. Further, fiscal year revenues were \$236.7  
27 million with software license revenues of \$103.1 million representing a 5 percent increase from  
28 software license revenues of \$98.4 million for fiscal year 2002. Ariba also announced new

1 customers for Ariba's spend management software such as Cummins Inc., Pittsburgh Plate and  
2 Glass, among others, as well as United KFPW and Educate, Inc., who selected Ariba Buyer, which  
3 was one of the products that a jury later found to have wilfully infringed on a competitor's patents.  
4 Ariba further disclosed that existing customers who "added solutions to complement their existing  
5 Ariba Buyer platform" included Amtrak, Sony Music, and British Airways. The October 22, 2003  
6 press release, which was also included in the Company's Form 8-K filed with the SEC on October  
7 22, 2003, was materially misleading because defendants omitted any mention of Ariba's patent  
8 violations concerning such software particularly the Ariba Buyer software, and which tainted the  
9 reported financial results.

10 33. On December 2, 2003, Ariba issued a press release announcing, *inter alia*, that its  
11 spend management software has "helped DuPont [ ], one of the world's leading science companies,  
12 transform its purchasing process, and save up to 13% on many categories of spend." Moreover,  
13 DuPont used Ariba Buyer - which was one of the products a jury found to have infringed on a  
14 competitor's patents - "to track and manage savings projects." Defendants stated that Ariba's  
15 software and services and "increased sourcing efficiencies have saved DuPont money and reduced  
16 sourcing cycle times from months to weeks." The December 2, 2003 press release was materially  
17 misleading because while touting the benefits of its software and services including Ariba Buyer,  
18 Ariba did not disclose that it was wilfully infringing on a competitor's patents.

19 34. On December 8, 2003, Ariba issued a press release proclaiming some of the benefits  
20 of Ariba's spend management software. The December 8, 2003 press release was materially  
21 misleading because Ariba did not disclose that it was wilfully infringing on a competitor's patents  
22 with respect to Ariba Buyer.

23 35. On December 17, 2003, Ariba issued a press release discussing, *inter alia*, some of  
24 the benefits of Ariba's spend management software. The December 17, 2003 press release was  
25 materially misleading because Ariba did not disclose that it was wilfully infringing on a competitor's  
26 patents with respect to Ariba Buyer.

27 36. On January 23, 2004, Ariba issued a press release announcing a definitive agreement  
28 to acquire FreeMarkets, Inc., a leading provider of Global Supply Management solutions. The

1 January 23, 2004 press release stated, *inter alia*:

2 Ariba and FreeMarkets Announce Strategic Merger Agreement

3 Combined Company to Offer Broadest Solutions in Enterprise Spend Management

4 SUNNYVALE, Calif. and PITTSBURGH, Penn. – January 23, 2004 - Ariba, Inc.  
 5 (Nasdaq: ARBA), a leading Enterprise Spend Management (ESM) solutions  
 6 provider, today announced a definitive agreement to acquire FreeMarkets, Inc.  
 7 (Nasdaq: FMKT), a leading provider of Global Supply Management solutions. The  
 merger of Ariba and FreeMarkets will combine their complementary strengths to help  
 global customers generate even greater savings through a more robust set of  
 Enterprise Spend Management solutions.

8 Under the terms of the definitive agreement, stockholders of FreeMarkets will  
 9 receive 2.25 Ariba common shares and \$2.00 in cash for each outstanding  
 FreeMarkets common share. Based on the closing price of Ariba common stock on  
 January 22, 2004, the transaction is valued at approximately \$493 million.

10 The combined company would have had approximately \$360 million in annualized  
 11 revenue and fees as of December 31, 2003. Ariba's broad suite of enterprise spend  
 12 management software and services will complement FreeMarkets services-based  
 13 sourcing and global supply management expertise. Ariba customers will benefit from  
 14 richer sourcing services and supply management knowledge while FreeMarkets  
 customers will benefit from a broader portfolio of solutions, both in sourcing and  
 across the ESM spectrum.

15 "It's no secret that many of the world's leading companies have already turned to  
 16 Ariba and FreeMarkets to save money," said Bob Calderoni, president and CEO,  
 17 Ariba. "This deal brings together two leading companies focused on providing  
 18 customers with innovative ways to impact their bottom lines. I am excited by what  
 this means for our customers, our stockholders, and our employees. The  
 complementary strengths of Ariba and FreeMarkets will help accelerate this market  
 and set the standard for spend management solutions for years to come."

19 The integrated company will retain the Ariba name and combine the leadership teams  
 20 of both companies. Upon completion of the acquisition, the company will be led by  
 Calderoni, who will retain his roles as CEO and Chairman of the Board....

21 \*\*\*

22 Separately, Ariba will seek stockholder approval to consummate a 1-for-5 or 1-for-6  
 23 reverse stock split, which if consummated would take place at the time of completion  
 of the merger.

24 The January 23, 2004 press release, which was also included in the Company's Form 8-K  
 25 filed with the SEC on January 23, 2004, was materially misleading because Ariba did not disclose  
 26 that it was wilfully infringing on a competitor's patents.

27 37. On January 28, 2004, Ariba issued a press release announcing, *inter alia*, its financial  
 28 results for the first quarter of fiscal 2004, its agreement to merge with FreeMarkets, and the gain of

1 new, large customers for Ariba's spend management software. In particular, defendants disclosed  
2 that first quarter revenues were \$52.7 million compared to \$61.7 million during the same quarter of  
3 fiscal 2003 and first quarter software license revenues were \$18.7 million compared to \$30.4 million  
4 during the same quarter of fiscal 2003. Also, new customers such as H.J. Heinz Company, Owens  
5 Corning, Michelin Group, among others, "purchased multiple components of Ariba's Spend  
6 Management solutions" including Ariba Buyer, which was one of the products a jury found that  
7 infringed on a competitor's patents. The January 28, 2004 press release, which was also included  
8 in the Company's Form 8-K filed with the SEC on January 28, 2004, was materially misleading  
9 because Ariba omitted any mention of defendants' willful patent violations concerning such software  
10 or that the reported results were accomplished with the benefit of this intentional misconduct.

11 38. On February 2, 2004, Ariba filed a Form 8-K with the SEC which repeated the merger  
12 agreement between Ariba and FreeMarkets that was previously announced in the January 23, 2004  
13 press release. A copy of the January 23, 2004 press release, among other things, was incorporated  
14 by reference in its entirety with the Form 8-K. The February 2, 2004 Form 8-K filing was materially  
15 misleading because Ariba did not disclose that it was wilfully infringing on a competitor's patents.

16 39. On February 4, 2004, Ariba issued a press release announcing the gain of a new  
17 customer for Ariba's spend management software and proclaiming the benefits of such software.  
18 Ariba stated:

19 *Based on results of a comprehensive analysis of Ariba and competing solutions,*  
20 *Owens Corning selected Ariba because of the company's deep understating [sic] of*  
21 *enterprise sourcing operations, strong process and project management capabilities*  
*for strategic planning and stakeholder involvement, and the ease of use that drives*  
*broad organizational adoption. (Emphasis added).*

22 The February 4, 2004 press release was materially misleading because Ariba did not disclose  
23 that it was wilfully infringing on a competitor's patents.

24 40. On February 18, 2004, Ariba issued a press release announcing three new products  
25 to its Enterprise Spend Management suit - namely, Ariba Category Procurement, Ariba Contract  
26 Workbench, and Ariba Settlement - to increase customer savings, and upgrades in its portfolio of  
27 spend management software products. In describing Ariba Category Procurement, which was one  
28 of the products that a jury found to have infringed on a competitor's patents, Ariba touted:

1 Ariba Category Procurement is a new solution for managing complex spend  
2 categories at the front lines of the business. The solution is designed to enable  
3 companies to double, or in some cases triple the amount of spend they currently  
4 capture and manage, resulting in increased savings to the bottom-line. Ariba  
Category Procurement uses new capabilities in collaborative requisitioning, rate card  
and formula-based contract pricing, and time card management to manage a wide  
variety of complex spend categories.

5 Ariba also announced upgrades to a number of its software applications such as Ariba Buyer,  
6 Ariba Enterprise Sourcing, and Ariba Category Management, among others. With respect to Ariba  
7 Buyer, which was another product that a jury found to have infringed on the same competitor's  
8 patents, upgrades consisted of "reporting enhancements in Ariba Buyer." The February 18, 2004  
9 press release was materially misleading because Ariba did not disclose that it was wilfully infringing  
10 on a competitor's patents with respect to two of its products - Ariba Category Procurement and Ariba  
11 Buyer.

12 41. On March 11, 2004, Ariba issued a press release publicizing a conference devoted  
13 to Ariba's spend management software. The press release stated, *inter alia*, that the conference will  
14 be held in Phoenix, Arizona and will feature keynote presenters from American Express Company,  
15 ExxonMobil, British Airways, and Gartner Research in addition to Ariba executives about the  
16 benefits of Ariba's Enterprise Spend Management software. Further, Michael Schmitt, Ariba's chief  
17 marketing officer and EVP of strategy, stated that its conferences "have evolved into an important  
18 source of information that help companies achieve the kind of spend control and savings that  
19 contribute directly to their bottom line." The March 11, 2004 press release was materially  
20 misleading because in publicizing the benefits of its spend management software, Ariba did not  
21 disclose that it was wilfully infringing on a competitor's patents.

22 42. On April 27, 2004, Ariba issued a press release announcing, *inter alia*, its financial  
23 results for the second quarter of fiscal 2004, the addition of three new spend management software,  
24 and the gain of new, large customers for Ariba's spend management software. Defendants disclosed  
25 that second quarter revenues were \$56.0 million compared to \$59.3 million during the same quarter  
26 of fiscal 2003, and software license revenues were \$15.9 million compared to \$27.7 million for the  
27 same period the prior year. Moreover, Bob Calderoni, Ariba's president and CEO, stated:

28 "This was an important quarter for Ariba...We continued to build capabilities that

1 *will reinforce our position as the market leader for Enterprise Spend Management*  
2 *solutions. The acquisitions of Alliente and Softface, coupled with our announcement*  
3 *of three new products, provide us with the broadest technology platform in the*  
4 *market, while we expect our pending merger with FreeMarkets to provide us with the*  
5 *deepest services expertise in the market.” (Emphasis added).*

6 Ariba also announced three new spend management products: Ariba Contract Workbench,  
7 Ariba Category Procurement, and Ariba Settlement. In describing Ariba Category Procurement,  
8 which was one of the products in which a jury found that Ariba wilfully infringed upon a  
9 competitor’s patents, defendants announced:

10 Ariba Category Procurement enables companies to manage the requisition-to-pay  
11 lifecycle for complex spend categories – such as temporary labor, consulting, print,  
12 and marketing – that require highly interactive buying processes, variable pricing,  
13 and time card and service receipt management. By facilitating these processes, the  
14 tool enhances contract compliance, allows for greater spend visibility, and accelerates  
15 cycle times.

16 \*\*\*\*\*

17 Ariba Spend Management solutions also include Ariba Buyer™, Ariba Analysis™,  
18 Ariba Contracts™, Ariba Invoice™, Ariba Category Management™, Ariba  
19 Enterprise Sourcing™ and Ariba Supplier Performance Management™.

20 The April 27, 2004 press release, which was also included in the Company’s Form 8-K filed  
21 with the SEC on April 27, 2004, was materially misleading because Ariba did not disclose that it was  
22 wilfully infringing on a competitor’s patents with respect to two of its software products, namely  
23 Ariba Category Procurement and Ariba Buyer, and that its reported results were obtained through  
24 sales of the illegal software.

25 43. On May 3, 2004, Ariba issued a press release announcing the commencement of its  
26 annual conference concerning spend management software. The conference will be held in Phoenix,  
27 Arizona and will feature keynote presenters from American Express Company, ExxonMobil, British  
28 Airways, and Gartner Research in which attendees “will interact with leading companies to learn  
how Enterprise Spend Management is moving to the front lines of business and becoming a hallmark  
of today’s most productive, cost-efficient organizations.” Attendees will also learn strategies and  
techniques related to enterprise spend management, and gain “best-practice tips” from Ariba  
customers including The Home Depot, Merrill Lynch, Saks, Inc., and Visa International. The May  
3, 2004 press release was materially misleading because in publicizing the benefits of its spend



1 management software, Ariba did not disclose that it was wilfully infringing on a competitor's  
2 patents.

3 44. On July 1, 2004, Ariba issued a press release announcing that it had completed its  
4 merger with FreeMarkets and effected a six-for-one reverse stock split. The July 1, 2004 press  
5 release, which was also included in the Company's Form 8-K filed with the SEC on July 15, 2004,  
6 was materially misleading because Ariba did not disclose that it was wilfully infringing on a  
7 competitor's patents and that a patent infringement suit had been filed against the Company on May  
8 26, 2004.

9 45. On July 21, 2004, Ariba issued a press release announcing, *inter alia*, its financial  
10 results for the third quarter of fiscal 2004, and the gain of new and existing customers deepening its  
11 relationship with Ariba and its spend management software. Specifically, defendants disclosed third  
12 quarter revenues of \$53.0 million compared to \$56.6 million during the same quarter of fiscal 2003,  
13 and software licensing revenues of \$15.5 million compared to \$21.3 million from the same quarter  
14 the prior year. Moreover, Bob Calderoni, Ariba's CEO and chairman of the board, and Dave  
15 McCormick, Ariba's president, stated the following, respectively:

16 "This was a solid quarter for Ariba... We completed the merger with FreeMarkets, and  
17 we have made tremendous progress on executing our integration plans. At the same  
18 time, we have continued to gain traction with significant customer wins in several  
19 blue chip accounts, and we are already off to a strong start with our combined  
20 customer efforts."

21 \*\*\*\*\*

22 "Ariba is now very well positioned to help companies address the most critical  
23 procurement challenges," said Dave McCormick, president, Ariba. "Our customers  
24 are looking for more than just short-term tactical projects, and they are turning to  
25 Ariba for the software and services solutions they need to accelerate their bottom line  
26 results."

27 The July 21, 2004 press release, which was also included in the Company's Form 8-K filed  
28 with the SEC on July 21, 2004, was materially misleading because Ariba did not disclose that it was  
wilfully infringing on a competitor's patents and that a patent infringement action had been filed  
against the Company on May 26, 2004.

46. On August 18, 2004, Ariba issued a press release announcing the benefits obtained  
by one large Ariba customer from using Ariba spend management software. The press release stated,

1 *inter alia*, that upon implementing five strategic sourcing events using Ariba's Spend Management  
2 software, O2, a leading provider of mobile services in Europe, had achieved savings of more than  
3 \$8 million. The August 18, 2004 press release was materially misleading because while publicizing  
4 the benefits of its spend management software, Ariba did not disclose that it was wilfully infringing  
5 on a competitor's patents and that a patent infringement action had been filed against the Company  
6 on May 26, 2004.

7 47. On October 13, 2004, Ariba issued a press release announcing that, of nine companies  
8 recently identified for excellence in "e-sourcing", five were Ariba customers. Moreover, Dave  
9 McCormick, president of Ariba, stated that "[t]hese accolades...are further evidence that our  
10 customers are using the latest technology to successfully manage spend and reap savings across their  
11 enterprise." The October 13, 2004 press release was materially misleading because in publicizing  
12 that five of its customers were recognized for e-sourcing excellence, Ariba did not disclose that some  
13 of its spend management software was wilfully infringing on a competitor's patents and that a patent  
14 infringement action had been filed against the Company on May 26, 2004.

15 48. On October 27, 2004, Ariba issued a press release announcing its financial results for  
16 the fourth quarter and fiscal year of 2004 (ended September 30, 2004), as well as gain of new, large  
17 customers for Ariba's spend management software such as Ameritrade, Caterpillar, Continental  
18 Airlines, and Sprint. Defendants disclosed, *inter alia*, that fourth quarter total revenues were \$84.1  
19 million compared to \$59.1 million during the same quarter of fiscal 2003, and fourth quarter  
20 software license revenues were \$15.6 million compared to \$23.6 million for the same period the  
21 prior year. Fiscal year 2004 revenues were \$245.8 million compared to \$236.7 million for fiscal year  
22 2003, and software license revenues were \$65.7 million compared to \$103.1 million for the prior  
23 year. Moreover, Bob Calderoni, Ariba's CEO, stated:

24 "I am pleased with our results during the fourth quarter...*We are leading the market*  
25 *at a time when demand for Spend Management solutions continues to grow.* Our  
26 team is delivering globally to help accelerate bottom line results for our customers,  
and we are executing well against our integration plans following our recent merger  
activities." (Emphasis added).

27 The October 27, 2004 press release, which was also included in the Company's Form 8-K  
28 filed with the SEC on October 27, 2004, was materially misleading because Ariba did not disclose

1 that it was wilfully infringing on a competitor's patents and that a patent infringement action had  
2 been filed against the Company on May 26, 2004.

3 49. On November 23, 2004, Ariba issued a press release announcing that two Ariba  
4 customers - Limited Brands and PPG Industries - had been cited for their "best practices" concerning  
5 spend management. Dave McCormick, Ariba's president, explained that Ariba in working closely  
6 with Limited Brands and PPG Industries, Ariba "help[ed] each increase their spend visibility and put  
7 spending controls in place" in order to "drive significant cost savings enterprise-wide." The  
8 November 23, 2004 press release was materially misleading because Ariba did not disclose that it  
9 was wilfully infringing on a competitor's patents and that a patent infringement action had been filed  
10 against the Company on May 26, 2004.

11 50. On December 7, 2004, Ariba issued a press release announcing a new customer for  
12 Ariba's spend management software and proclaiming some of the benefits of such software. The  
13 press release stated, *inter alia*, that Caterpillar Inc., a leading manufacturer of construction and  
14 mining equipment, clean diesel and natural gas engines and industrial gas turbines, selected Ariba's  
15 spend management software including Ariba Buyer among others, to help manage its global  
16 procurement cycle. In addition, "Ariba designed and developed a customized global indirect  
17 purchasing system that will manage Caterpillar's full spending lifecycle - from planning to  
18 payment...." Ariba explained that the benefits of its spend management software include reduced  
19 processing time and costs, contract efficiency and better control and visibility in the procurement  
20 lifecycle. The December 7, 2004 press release was materially misleading because Ariba did not  
21 disclose that it was wilfully infringing on a competitor's patents particularly with respect to Ariba  
22 Buyer and that a patent infringement action had been filed against the Company on May 26, 2004.

23 51. On December 17, 2004, Ariba issued a press release announcing deepened ties with  
24 a large customer for Ariba's spend management software and proclaiming some of the benefits of  
25 such software. The press release stated, *inter alia*, that Air Products and Chemicals, Inc., will  
26 "globally deploy Ariba® Invoice™ and expand deployment of Ariba Buyer and Ariba Sourcing  
27 solutions to streamline sourcing processes and improve the company's corporate-wide spend  
28 management." The release further indicated that Air Products and Chemicals will use Ariba Buyer,

1 which was one of the products a jury found to have infringed on a competitor's patents, "to reduce  
 2 expenses by ensuring that buyers purchase from negotiated contracts...." Finally, Dave McCormick,  
 3 Ariba's president, explained reasons why Air Products and Chemicals chose to deepen its ties with  
 4 Ariba by stating:

5           *"Our difference is that we are focused on spend management. We*  
 6 *help companies solve the primary obstacles to achieving cost savings*  
 7 *and building out a closed-loop process. Companies benefit not only*  
 8 *from our technology, but also from our deep analysis of marketplace*  
 9 *trends and conditions. This is precisely what makes Ariba so different*  
 10 *from other providers."* (Emphasis added).

11           The December 17, 2004 press release was materially misleading because Ariba did not  
 12 disclose that it was wilfully infringing on a competitor's patents and that a patent infringement action  
 13 had been filed against the Company on May 26, 2004.

14           52. On January 7, 2005, Ariba issued a press release announcing, *inter alia*, that it had  
 15 been identified in a recent report as one of seven e-procurement leaders based on its product  
 16 offerings. In response to this report, Michael Schmitt, Ariba's executive vice president and chief  
 17 marketing officer, stated:

18           *"Ariba is part of an extremely competitive marketplace, so this ranking is a testament*  
 19 *to our success in creating the most effective solutions and services for spend*  
 20 *management...We see a lot of room for growth and innovation in this space,*  
 21 *particularly when tied to our leadership in other aspects of spend management, such*  
 22 *as sourcing and analysis. Our commitment is to support the broader role of this*  
 23 *category rather than to focus on any one facet."* (Emphasis added).

24           The report further praised Ariba for having "set the bar for features and functions" in  
 25 connection with the eProcurement solutions. The January 7, 2005 press release was materially  
 26 misleading because in publicizing its award of being a "leader" in spend management, Ariba did not  
 27 disclose that it was wilfully infringing on a competitor's patents and that a patent infringement action  
 28 had been filed against the Company on May 26, 2004.

53. On January 31, 2005, Ariba issued a press release announcing its financial results for  
 the first quarter of fiscal 2005 (ending September 30, 2005), as well as gain of new, large customers  
 for Ariba's spend management software. Defendants disclosed, *inter alia*, that first quarter revenues  
 for fiscal 2005 were \$86.9 million compared to \$52.7 million for the same period during fiscal 2004,

1 and software license revenues were \$17.1 million compared to \$18.7 million for the same period the  
2 prior year. Ariba also disclosed the addition of 19 new customers during the quarter and renewed  
3 or expanded agreements with many of its existing customers including Merck, Shell Oil, and Conoco  
4 Phillips. The January 31, 2005 press release, which was included in the Company's Form 8-K filed  
5 with the SEC on January 31, 2005, was materially misleading because Ariba did not disclose that  
6 it was wilfully infringing on a competitor's patents and that a patent infringement action had been  
7 filed against the Company on May 26, 2004.

8 54. The statements identified above in ¶¶ 19-53 were materially false and misleading  
9 because, in discussing Ariba's spend management software, the benefits obtained by customers using  
10 such software, the leadership position of Ariba in the marketplace for such software, and the  
11 revenues gained by Ariba from sales of such software, defendants omitted any mention of Ariba's  
12 patent violations concerning such software and/or of the costs of liability for such patent violations.

13 55. Following the conclusion of the class period, Ariba's shares declined materially.

14 **ePLUS' PATENT INFRINGEMENT ACTION AGAINST ARIBA**

15 56. In 2000 and 2001, ePlus, Inc. of Herndon, Virginia, obtained three patents concerning  
16 its software procurement system, which allowed companies' buyers to search electronic catalogues  
17 online when searching for goods, to comparison-shop to find the best vendor and best price, and to  
18 determine product availability. Subsequently, Ariba developed procurement software products -  
19 Ariba Buyer, Ariba Marketplace, and Ariba Category Procurement - that infringed upon ePlus'  
20 patents.

21 57. On May 26, 2004, ePlus, Inc. filed a patent infringement action (the "Patent Action")  
22 against Ariba in the United States District Court for the Eastern District of Virginia, (No.  
23 1:04cv612), alleging that at least three Ariba products - Ariba Buyer, Ariba Marketplace and Ariba  
24 Category Procurement - infringed three U.S. patents owned by ePlus. The Patent Action claims  
25 royalty damages of \$76-\$98 million as well as Ariba's discontinuance of further sales of these  
26 products. ePlus contended that Ariba infringed on all 79 claims in its three patents. To streamline  
27 the trial, the presiding judge, U.S. District Judge Leonie M. Brinkema, asked ePlus to bring just eight  
28 claims to the jury's attention. The trial was bifurcated with the liability phase of the trial beginning

1 on January 24, 2005 and lasted only two weeks.

2 58. The Patent Action was nowhere disclosed by Ariba in any of its public statements  
3 (such as its July 21, 2004 earnings announcement for the quarter ended June 30, 2004, and its  
4 October 27, 2004 earnings announcement for the quarter and the fiscal year ended September 30,  
5 2004) or its SEC filings (such as its August 13 Form 10-Q for the quarter ended June 30, 2004) until,  
6 on December 14, 2004, Ariba filed its Form 10-K for its fiscal 2004 year (ended September 30,  
7 2004) (the "2004 Form 10-K"). The continuing non-disclosure of the Patent Action in Ariba's  
8 public statements and SEC filings until December 14, 2004 was a material omission that rendered  
9 such public statements and SEC filings materially misleading.

10 59. The 2004 Form 10-K (filed with the SEC on December 14, 2004) stated for the first  
11 time, in relevant part:

12 Patent Infringement Litigation

13 On May 26, 2004, a patent infringement action was filed against us in the United  
14 States District Court for the Eastern District of Virginia by ePlus, Inc, alleging that  
15 three of our products, Ariba Buyer, Ariba Marketplace and Ariba Category  
16 Procurement, infringe three U.S. patents owned by ePlus.

17 Discovery in this case is complete and the trial has been scheduled for January 4,  
18 2005. The Court has indicated that it will bifurcate the trial and try the validity and  
19 infringement issues to the jury before trying the damages-related issues. Both parties  
20 had moved for summary judgment in their favor on the question of infringement.  
21 Additionally, we had moved for summary judgment that certain claims in the patents  
22 in suit are invalid. On November 19, 2004, the Court denied all the summary  
23 judgment motions.

24 We cannot predict the outcome of this litigation. If we were to lose, we could be  
25 liable for damages for past infringement. Plaintiff claims royalty damages of  
26 approximately \$76 million to \$98 million. We dispute that we are liable for any  
27 damages and dispute plaintiff's calculation as to the amount of damages. If we were  
28 to lose, we could be enjoined from selling the products at issue in the litigation and  
enjoined from inducing customers to infringe. However, we believe we have strong  
defenses to ePlus's claims and intend to vigorously defend against them.

60. The disclosure in the 2004 Form 10-K was incomplete, misleading and omitted  
material information - namely, that Ariba had been willfully infringing upon ePlus' patents.

61. On February 8, 2005, Ariba revealed that following a nine day trial, a jury had found  
Ariba guilty of willful infringement of ePlus' patents, and that Ariba's potential liability for damages  
could be significantly higher than the amount disclosed in the 2004 Form 10-K. The February 8,



2005 press release stated:

**Verdicts Rendered in First Phase of Ariba Patent Infringement Trial**

SUNNYVALE, Calif., February 8, 2005 - Ariba, Inc. (Nasdaq: ARBA), the leading Spend Management solutions provider, today announced that it has been found liable by a jury in the United States District Court for the Eastern District of Virginia for infringing three U.S. patents held by ePlus, Inc., a company based in Herndon, Virginia. On February 7, 2005, the jury declined to invalidate the three patents at issue and found that Ariba infringed certain claims contained in the three patents. Ariba believes the findings of the jury are erroneous and intends to vigorously pursue an appeal of the verdicts. In the meantime, Ariba intends to quickly provide its customers with software updates designed to avoid the alleged infringement.

ePlus filed the infringement action on May 26, 2004 claiming that certain features in three of Ariba's products, Ariba Buyer, Ariba Marketplace and Ariba Category Procurement, infringed claims in the three patents, and the trial began on January 24, 2005. The trial judge bifurcated the trial into two phases, the first to determine the validity of the patents and whether Ariba's products infringed those patents and the second to try damages-related issues. Yesterday's findings were only as to the first phase of the trial, and Ariba expects that the damages-related phase will begin on February 9, 2005.

ePlus claims royalty damages of \$76.0 million to \$98.0 million. Based on the jury's finding of willful infringement, the trial judge has the discretion to enhance any award up to three times the jury's award of damages. Ariba disputes that it is liable for any damages and disputes ePlus's calculation as to the amount of the damages. However, Ariba cannot predict the outcome of the damages phase of the trial, whether it will be successful on appeal, or whether it will be successful in obtaining a stay of any injunction against further infringement pending appeal.

62. In response to the February 8, 2005 press release, which revealed Ariba's class period fraud, Ariba common stock fell 17.5%, closing on February 8, 2005 at \$8.04 per share, down \$1.71 per share from the previous day's closing price of \$9.75 per share, thereby causing injury to investors who purchased Ariba shares at artificially inflated prices during the class period.

**DEFENDANTS ACTED WITH SCIENTER**

**A. The Evidence Obtained by ePlus, Inc. in the Patent Action was Sufficient to Convince the Jury that Ariba Intentionally Infringed on ePlus' Patents**

63. As revealed in the Patent Action, ePlus obtained significant evidence during discovery to show - and ultimately convince the jury - that Ariba intentionally infringed on ePlus' patent rights.

64. The first evidence demonstrating this occurred shortly after ePlus' May 29, 2003 press release announcing the issuance of U.S. Patent No. 6,505,172, one of the three patents in suit in the Patent Action.

1           65.     Ariba clearly knew about the ePlus patent. Evidence submitted at trial confirms that  
2 a week following ePlus' May 29, 2003 press release, Ariba's Manager of Sales Enablement, Don  
3 Darby, sent an e-mail to the Ariba sales force pertaining to the issuance of the ePlus patent. *See*  
4 Plaintiff ePlus, Inc.'s Brief in Opposition to Defendant Ariba, Inc.'s Motion *In Limine* to Preclude  
5 Evidence of Willfulness, at 3 (Dkt. No. 213). This evidence, *inter alia*, was presented to the jury to  
6 show that Ariba was on notice of ePlus' patent as of mid-2003 but Ariba made no attempt to avoid  
7 infringing ePlus' patent rights.

8           66.     Evidence obtained by ePlus in discovery also revealed that not one of any of Ariba  
9 witness testified that Ariba did anything to meet its duty of care to avoid infringing ePlus' known  
10 patent rights. *Id.* For example, upon becoming aware of ePlus' patents or the possibility of  
11 infringing on the patents, Ariba neither redesigned its accused products and methods nor produced  
12 a competent written opinion of counsel as to non-infringement, the invalidity of ePlus' patents, or  
13 its unenforceability. *Id.*

14           67.     ePlus obtained testimony from Ariba's own witnesses confirming that Ariba did not  
15 review ePlus' patents after receiving notice of the infringement suit. This clearly supports evidence  
16 of Ariba's willfulness. For instance, Ariba's Chief Technical Officer and its key sales officer  
17 charged with selling its infringing product, testified that they did not review the patents after learning  
18 of the lawsuit. *Id.* at 14. Moreover, Ariba's in-house attorney testified that he only looked at the first  
19 few pages of one of ePlus' patents after learning of the lawsuit but then put it aside because he did  
20 not find it to be "good reading." *Id.*

21           68.     ePlus discovered that Ariba did not have a patent clearance policy or procedure for  
22 reviewing its commercial products to determine if its product might be infringing on the patent rights  
23 of other companies. *Id.* While ePlus recognized that the lack of a patent clearance policy was not  
24 dispositive, it was an additional fact for the jury's consideration under the totality of circumstances  
25 for willfulness. Ultimately, the jury concluded that it was when it found by clear and convincing  
26 evidence that Ariba wilfully infringed on ePlus' patents. *See* Special Verdict Form (Dkt. No. 281).

27           69.     ePlus also offered testimony from an Ariba witness "that an Ariba employee, when  
28 drafting a competitor report about ePlus in September 2003, copied portions of an ePlus web page

1 or brochure which stated that ePlus' electronic sourcing technology was patented." *See* Plaintiff  
2 ePlus, Inc.'s Brief in Support of Motion for Judgment as a Matter of Law, at 15, n. 7 (Dkt. No. 275).  
3 Moreover, "[i]n response to the question, '[s]o, as of September 11, 2003, personnel within Ariba  
4 were aware that ePlus had patents covering its supplier enablement technology correct?'" Ariba's  
5 witness agreed. *Id.*

6 70. On October 6, 2004, ePlus proffered the expert report of Harry F. Manbeck, Jr., a  
7 former Patent Trademark Office Commissioner, who determined, *inter alia*, that: 1) Ariba became  
8 aware of the patents by June 2003; 2) Ariba continued to infringe after becoming aware of the  
9 patents; 3) there was no evidence that Ariba performed any analysis of the patents after learning of  
10 them to determine whether they were infringed, invalid, or unenforceable; and 4) there was no  
11 evidence that Ariba redesigned its products to avoid infringement. *See* Plaintiff ePlus, Inc.'s Brief  
12 in Opposition to Defendant Ariba, Inc.'s Motion for Mistrial, at 12 (Dkt. No. 285).

13 71. After a nine-day trial, which included expert testimony presented from both parties,  
14 ePlus' submission of 33 Ariba-authored documents into evidence to show infringement compared  
15 to no documents offered by Ariba in opposition, and admissions from Ariba executives both at trial  
16 and from deposition testimony demonstrating the complete disregard of the ramifications of  
17 infringing ePlus' patents, the jury found - after considering the totality of the circumstances - that  
18 Ariba wilfully infringed on ePlus' patents. *See* Special Verdict Form (Dkt. No. 281).

#### 19 ADDITIONAL SCIENTER ALLEGATIONS

##### 20 A. Defendant McCormick's and Other Corporate Officers' Stock Sales

21 72. While Ariba's officers and directors were issuing misleading statements about Ariba's  
22 business by virtue of failing to disclose that it was infringing on a competitor's patent rights,  
23 Defendant McCormick and three corporate officers sold shares of Ariba which they owned for total  
24 proceeds in excess of \$2.8 million while in possession of material nonpublic information, and to  
25 profit from the artificial inflation of Ariba's stock price created by Ariba's fraud.

26 73. Specifically, during the first two weeks of November 2004, Defendant McCormick  
27 sold approximately 169,000 shares of Ariba stock, at prices between \$14.29 and \$15.13 per share,  
28 for proceeds of approximately \$2.5 million. The timing of Defendant McCormick's sale of Ariba

1 stock was suspicious because it occurred after ePlus filed its patent infringement suit against the  
2 Company on May 26, 2004 but before Ariba disclosed the patent infringement suit in the Company's  
3 2004 Form 10-K filed with the SEC on December 14, 2004.

4 74. The timing of the three corporate officers' sales of their Ariba stock during the Class  
5 Period was suspicious in that it occurred within months following ePlus' May 29, 2003 press release  
6 announcing the issuance of U.S. Patent No. 6,505,172, one of the three patents in suit in the Patent  
7 Action. Specifically, on or about June 3, 2003, Ariba vice president, John True, sold 60,000 shares  
8 of Ariba stock at a price of \$3.80 per share, for proceeds of approximately \$228,000. Similarly, on  
9 or about June 11, 2003, Ariba vice president, Kevin Costello, sold 24,131 shares of Ariba stock at  
10 \$3.72 per share, for proceeds of approximately \$89,797. Last, on or about July 31, 2003, Ariba vice  
11 president Michael Schmitt, sold 21,417 shares of Ariba stock at \$2.73 per share, for proceeds of  
12 approximately \$58,468

13 **B. Defendants' Issuance of Ariba Stock as Transaction Currency**

14 75. Lastly, in addition to the personal benefits reaped by Defendant McCormick and  
15 Ariba's officers, Ariba used its artificially inflated stock as currency to acquire FreeMarkets Inc.  
16 during the Class Period. In particular, Ariba acquired FreeMarkets for approximately \$547.4 million  
17 consisting of, *inter alia*, nearly \$89.6 million of cash and \$364.4 million of artificially inflated Ariba  
18 common stock (based on the issuance of approximately 16.8 million shares with a fair value of  
19 \$21.70 per share<sup>1</sup>). On July 1, 2004, Ariba completed its merger with FreeMarkets and effected a  
20 six-for-one reverse stock split.

21 **CLASS ACTION ALLEGATIONS**

22 76. Plaintiffs bring this lawsuit pursuant to Rule 23(a) and (b)(3) of the Federal Rules  
23 of Civil Procedure, on behalf of themselves and on behalf of a class of persons who purchased Ariba  
24

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25  
26 <sup>1</sup>As reported in Ariba's Form 10-Q for the period ending June 30, 2004 at note 9, the fair  
27 value of \$21.70 per share of Ariba common stock is based on Ariba's average closing price per  
28 share as reported on NASDAQ for each trading-day during the period beginning two days before  
and ending two days after January 23, 2004, the merger announcement date, as adjusted for the  
one-for-six reverse stock split effected on July 1, 2004.

1 stock from May 29, 2003 through February 7, 2005, inclusive (the "Class"). Excluded from the  
2 Class are defendants herein, members of the immediate families of each of the defendants, any  
3 person, firm, trust, corporation, officer, director or other individual or entity in which any defendant  
4 has a controlling interest or which is related to or affiliated with any of the defendants, and the legal  
5 representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

6 77. This action is properly maintainable as a class action for the following reasons:

7 (a) The Class is so numerous that joinder of all Class members is impracticable. As of  
8 April 30, 2005, Ariba had approximately 66 million shares outstanding, and an average of 675,152  
9 shares of Ariba stock traded daily. Members of the Class are scattered throughout the United States.

10 (b) There are questions of law and fact which are common to members of the Class and  
11 which predominate over any questions affecting only individual members. The common questions  
12 include, *inter alia*, the following:

13 (I) Whether the defendants' acts as alleged herein violated the federal securities  
14 laws;

15 (ii) Whether defendants participated in and pursued the common course of  
16 conduct complained of herein;

17 (iii) Whether documents, SEC filings, press releases and other statements  
18 disseminated to the investing public and Ariba's common stockholders during the Class Period  
19 misrepresented material facts about the operations, financial condition and earnings of Ariba;

20 (iv) Whether the market prices of Ariba stock during the Class Period were  
21 artificially inflated due to material misrepresentations and the failure to correct the material  
22 misrepresentations complained of herein; and

23 (v) To what extent the members of the Class have sustained damages and the  
24 proper measure of damages.

25 (c) Plaintiffs' claims are typical of the claims of other members of the Class and plaintiffs  
26 have no interests that are adverse or antagonistic to the interests of the Class.

27 (d) Plaintiffs are committed to the vigorous prosecution of this action and have retained  
28 competent counsel experienced in litigation of this nature. Accordingly, plaintiffs are an adequate

1 representative of the Class and will fairly and adequately protect the interests of the Class.

2 (e) Plaintiffs anticipate that there will not be any difficulty in the management of this  
3 litigation as a class action.

4 78. For the reasons stated herein, a class action is superior to other available methods for  
5 the fair and efficient adjudication of this action and the claims asserted herein. Because of the size  
6 of the individual Class members' claims, few, if any, Class members could afford to seek legal  
7 redress individually for the wrongs complained of herein.

## 8 **COUNT I**

### 9 **For Violation of Section 10(b) of the Exchange Act**

#### 10 **and Rule 10b-5 Promulgated Thereunder Against All Defendants**

11 79. Plaintiffs repeat and reallege the allegations set forth above as though fully set forth  
12 herein.

13 80. This Count is brought by plaintiffs pursuant to §10(b) of the Exchange Act and Rule  
14 10b-5 promulgated thereunder by the SEC against all defendants.

15 81. The defendants: (a) employed devices, schemes, and artifices to defraud; (b) made  
16 untrue statements of material fact and/or omitted to state material facts necessary in order to make  
17 the statements made not misleading; and (c) engaged in acts, practices, and a course of business  
18 which operated as a fraud and deceit upon the purchasers of Ariba stock in an effort to maintain  
19 artificially high market prices for Ariba stock in violation of § 10(b) of the Exchange Act and Rule  
20 10b-5. Defendants are sued as primary participants in the wrongful and illegal conduct charged  
21 herein and/or as controlling persons as alleged below.

22 82. In addition to the duties of full disclosure imposed on the defendants by their status  
23 as controlling persons of Ariba, as a result of their affirmative statements and reports, or participation  
24 in the making of affirmative statements and reports to the investing public, defendants had a duty  
25 to promptly disseminate truthful information that would be material to investors in compliance with  
26 the integrated disclosure provisions of the SEC as embodied in SEC regulations S-X (17 C.F.R.  
27 §210.01, *et seq.*) and S-K (17 C.F.R. § 229.10, *et seq.*) and other SEC regulations, including accurate  
28 and truthful information with respect to Ariba's stock, operations, financial condition and earnings



1 so that the market price of Ariba stock would be based on truthful, complete and accurate  
2 information.

3 83. Defendants, individually and in concert, directly and indirectly, by using the means  
4 and instrumentalities of interstate commerce and/or of the mails, engaged and participated in a  
5 continuous course of conduct to conceal adverse material information about the business and  
6 operations of Ariba as specified herein. The defendants employed devices, schemes and artifices to  
7 defraud, while in possession of material adverse non-public information and engaged in acts,  
8 practices, and a course of conduct as alleged herein in an effort to assure investors of Ariba's value  
9 and performance, which included the making of, or the participation in the making of, untrue  
10 statements of material facts and omitting to state material facts necessary in order to make the  
11 statements made about Ariba and its business operations, in light of the circumstances under which  
12 they were made, not misleading, as set forth more particularly herein, and engaged in transactions,  
13 practices and a course of business which operated as a fraud and deceit upon the purchasers of Ariba  
14 stock during the Class Period.

15 84. The primary liability and controlling person liability of defendants arises from the fact  
16 that during the Class Period, the defendants engaged in a scheme to conceal Ariba's patent violations  
17 in order to prevent any ensuing decline in the price of Ariba stock (so that defendants could sell  
18 insider holdings at artificially inflated prices and so as not to disturb Ariba's pending acquisition of  
19 FreeMarkets).

20 85. The defendants had actual knowledge of the misrepresentations and omissions of  
21 material facts set forth herein. Such defendants' material misrepresentations or omissions were done  
22 knowingly and for the purpose and effect of concealing Ariba's violations and liabilities from the  
23 investing public and supporting the artificially inflated price of their stock. Indeed, a jury, following  
24 a lengthy trial, found Ariba's conduct to have been "willful."

25 86. As a result of the dissemination of the materially false and misleading information  
26 and failure to disclose material facts by all defendants, as set forth above, the market price of Ariba  
27 stock was artificially inflated during the Class Period. In ignorance of the fact that the market price  
28 for Ariba stock was artificially inflated, and relying directly or indirectly on the false and misleading

1 statements made by defendants, or upon the integrity of the market in which the shares trade, and the  
2 truth of any representations made to appropriate agencies and to the investing public, at the times  
3 at which any statements were made, and/or on the absence of material adverse information that was  
4 known by defendants but not disclosed in public statements by defendants during the Class Period,  
5 plaintiffs and the other members of the Class acquired Ariba stock during the Class Period at  
6 artificially high prices and were damaged when the shares declined in price in reaction to disclosures  
7 of Ariba's willful patent infringement.

8 87. At the time of said misrepresentations and omissions, plaintiffs and other members  
9 of the Class were ignorant of their falsity and believed them to be true. Had plaintiffs and the other  
10 members of the Class and the marketplace known of the true financial condition and business  
11 prospects of Ariba, which were not disclosed by defendants, plaintiffs and other members of the  
12 Class would not have purchased Ariba stock during the Class Period, or, if they had purchased such  
13 stock during the Class Period, they would not have done so at the artificially inflated prices which  
14 they paid.

15 88. By virtue of the foregoing, defendants have violated §10(b) of the Exchange Act and  
16 Rule 10b-5 promulgated thereunder.

17 89. As a direct and proximate result of the wrongful conduct of the defendants, plaintiffs  
18 and the other members of the Class suffered damages in connection with their purchases of Ariba  
19 stock during the Class Period.

## 20 COUNT II

### 21 For Violation of Section 20(a) of the Exchange Act Against All Defendants

22 90. Plaintiffs repeat and reallege the allegations set forth above as if set forth fully herein.

23 91. Defendants acted as controlling persons of Ariba within the meaning of § 20(a) of the  
24 Exchange Act as alleged herein. By virtue of their high-level positions, substantial stock holdings,  
25 participation in and/or awareness of Ariba's operations and/or intimate knowledge of its internal  
26 financial condition, business practices, products and the actual progress of development and  
27 marketing efforts, the Individual Defendants had the power to influence and control and did  
28 influence and control, directly or indirectly, the decision-making of Ariba, including the content and

1 dissemination of the various statements which plaintiffs contends are false and misleading. Ariba  
 2 controlled the Individual Defendants and all of its employees. Each of the Individual Defendants  
 3 was provided with or had unlimited access to copies of Ariba's internal reports, press releases, public  
 4 filings and other statements alleged by plaintiffs to be misleading prior to and/or shortly after these  
 5 statements were issued and had the ability to prevent the issuance of the statements or cause the  
 6 statements to be corrected. In particular, each of the Individual Defendants had direct involvement  
 7 in or intimate knowledge of the day-to-day operations of Ariba and therefore is presumed to have  
 8 had the power to control or influence the particular transactions giving rise to the securities  
 9 violations as alleged herein, and exercised the same.

10 92. As set forth above, defendants violated §10(b) of the Exchange Act and Rule 10b-5  
 11 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling  
 12 persons, defendants are liable pursuant to § 20(a) of the Exchange Act.

13 93. As a direct and proximate result of the wrongful conduct of defendants, plaintiffs and  
 14 other members of the Class suffered damages in connection with their purchases of Ariba stock  
 15 during the Class Period.

#### 16 PRAYER FOR RELIEF

17 WHEREFORE, plaintiffs, on behalf of themselves and the Class, prays for judgment as  
 18 follows:

19 A. Declaring this action to be a class action properly maintained pursuant to Rule 23 of  
 20 the Federal Rules of Civil Procedure;

21 B. Awarding plaintiffs and other members of the Class damages together with interest  
 22 thereon;

23 C. Awarding plaintiffs and other members of the Class costs and expenses of this  
 24 litigation, including reasonable attorneys' fees, accountants' fees and experts' fees and other costs  
 25 and disbursements; and

26 D. Awarding plaintiffs and other members of the Class such equitable/injunctive and/or  
 27 other and further relief as may be just and proper under the circumstances.  
 28

**JURY DEMAND**

Plaintiffs demand a trial by jury.

Dated: November 30, 2006

Respectfully submitted,

**S/Michael Goldberg**

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1                   **PROOF OF SERVICE BY ELECTRONIC POSTING**  
2                   **PURSUANT TO NORTHERN DISTRICT OF CALIFORNIA LOCAL RULES AND**  
3                   **ECF GENERAL ORDER NO. 45**  
4                   **AND BY MAIL ON ALL KNOWN NON-REGISTERED PARTIES**

5                   I, the undersigned, say:

6                   I am a citizen of the United States and am employed in the office of a member of the Bar of  
7                   this Court. I am over the age of 18 and not a party to the within action. My business address is 1801  
8                   Avenue of the Stars, Suite 311, Los Angeles, California 90067.

9                   On November 30, 2006, I served the following by posting such documents  
10                  electronically to the ECF website of the United States District Court for the Northern  
11                  District of California:

12                  1           **AMENDED COMPLAINT FOR VIOLATIONS OF FEDERAL**  
13                  **SECURITIES LAWS**

14                  on all ECF-registered parties in the action and, upon all others not so-registered but instead listed  
15                  below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully  
16                  prepaid in the United States mail at Los Angeles, California. They are:

17                               **SEE SERVICE LIST**

18                  Executed on November 30, 2006, at Los Angeles, California.

19                  I certify under penalty of perjury that the foregoing is true and correct.

20                               S/Kyaa Heller  
21                               Kyaa Heller  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

**Electronically To All ECF-Registered Entities**

**By US Mail To All Known Non-ECF-Registered Entities**

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